

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

TOMAS D. CUESTA, SR.,

Petitioner,

v.

Case No. 04-C-645

DANIEL BERTRAND,

Respondent.

ORDER DENYING MOTION FOR RELIEF FROM JUDGMENT

Tomas D. Cuesta, Sr. (“Cuesta”) is a prisoner incarcerated pursuant to a Wisconsin state court judgment. On July 6, 2004, Cuesta filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The court screened Cuesta’s petition pursuant to Rule 4 of the Rules Governing § 2254 cases and ordered that the respondent answer certain of the sixty grounds for relief that were set forth in Cuesta’s petition.

Instead of filing an answer, however, the respondent filed a motion to dismiss the petition as untimely under 28 U.S.C. § 2244(d). That motion was granted, and the court dismissed this case. On August 8, 2005, Cuesta filed a “Motion for Relief from Judgment” but did not allege any error regarding the court’s application of the time limits. Instead, Cuesta merely asked the court to reconsider his petition and reach a different result. Therefore, Cuesta’s motion for reconsideration was denied on February 9, 2006.

Currently pending is a motion titled by Cuesta as “Motion For Judicial Review the Entitle Habeas Corpus Petition and Motion for Relief from Judgment, En Banc” in which Cuesta requests en banc review of the dismissal of his habeas petition.

En banc review is not available to a party in a district court but rather is limited to Courts of Appeals. See 28 U.S.C. § 46; Fed. R. App. P. 35. Therefore, Cuesta’s motion may be best regarded as a “Motion to Reconsider Reconsideration.”

Cuesta’s motion for reconsideration was previously denied by this court. A party seeking reconsideration of a decision must present either newly discovered evidence or establish a manifest error of law or fact. Oto v. Metropolitan Life Ins. Co., 224 F.3d 601, 606 (7th Cir.2000). Cuesta again fails to present any basis for reconsideration of the decision dismissing his petition as untimely. Rather, Cuesta merely reargues the substantive issues of his petition.

The court will not repeat its reasons for dismissing the petition as untimely in this decision. It is sufficient to say that, in the opinion of this court, the filing deadline set forth in 28 U.S.C. § 2244(d) requires dismissal for the reasons discussed in the court’s earlier decision.

IT IS THEREFORE ORDERED that Cuesta’s motion for reconsideration en banc is **denied**.

IT IS FURTHER ORDERED that Cuesta’s “Request for Status of Motion for Rehearing En Banc” is **denied as moot**.

Dated at Milwaukee, Wisconsin, this 1st day of June, 2006.

s/AARON E. GOODSTEIN
United States Magistrate Judge